



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2020-0144]**

#### **Hours of Service of Drivers: Mountain Blade Runner Helicopters, LLC (MBR Helicopters); Application for Exemption**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of final disposition; denial of application for exemption.

**SUMMARY:** FMCSA announces its decision to deny the exemption request from Mountain Blade Runner Helicopters, LLC (MBR Helicopters) for an exemption from the hours-of-service (HOS) regulations for operators of its ground support equipment. MBR Helicopters requested relief from the 14-hour “driving window” rule and the requirement that drivers have 10 consecutive hours off duty at the end of the work shift. The exemption would allow drivers of MBR Helicopters’ ground support equipment a 16-hour window to complete all driving and enable them to use an 8-consecutive hour off-duty break, combined with at least 2 additional off-duty hours during the 16-hour driving window. FMCSA analyzed the exemption application and public comments, and determined that the application lacked evidence that the exemption would ensure a level of safety equivalent to or greater than that which would be achieved absent such exemption.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202) 366-2722; [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

## **I. Public Participation**

### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to [www.regulations.gov](http://www.regulations.gov) and insert the docket number, FMCSA-2020-0144 in the “Keyword” box and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

## **II. Legal Basis**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify

the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **III. Current Regulations**

Under 49 CFR 395.3(a)(1), a driver may not drive without first taking 10 consecutive hours off duty, and 49 CFR 395.3(a)(2) permits a driver to drive only during a period of 14 consecutive hours after coming on duty following 10 consecutive hours off duty. The driver may not drive after the end of the 14-consecutive-hour period, without first taking 10 consecutive hours off duty.

### **IV. Request for Exemption**

MBR Helicopters requested relief from the 14-hour “driving window” rule and the requirement that drivers have 10 consecutive hours off duty at the end of the work shift. The requested exemption would allow drivers of MBR Helicopters’ ground support equipment a 16-hour window within which to complete all driving and enable them to use an 8-consecutive hour off-duty break, combined with at least 2 additional off-duty hours during the 16-hour driving window.

MBR Helicopters has been serving the utility helicopter industry and its customers since 2008 in the State of Colorado and across the United States. MBR Helicopters requested this exemption for approximately 10 of its drivers of ground support commercial motor vehicles (CMVs), all of whom possess commercial driver licenses (CDLs) with applicable endorsements. MBR Helicopters currently operates a fleet of Class 5 straight trucks and pickup trucks that pull trailers. Drivers of ground support equipment are specially trained to refuel, rig, reload, and maintain helicopters. They also operate CMVs transporting helicopter fuel that requires a CDL with a hazardous materials and tank endorsement.

The driver of an MBR Helicopters ground-support CMV typically drives an average of 60 miles one way to a remote landing zone, arrives at dawn, performs duties

during the day, drives back to an airport to refill the tank with helicopter fuel, then drives back to the place of lodging near dusk. During the day, ground crew members have relatively few duties, allowing 2 or more hours off duty between tasks. This schedule varies greatly depending on customer needs. In general, however, when not responding to or returning from incidents, work days usually last about 8 to 10 hours, including all on-duty and driving time.

MBR Helicopters' contracts with government agencies specify that its maintenance personnel must be available for a maximum of 14 hours, and that maintenance personnel may extend their duty day to 16 hours. The ground crews travel between the helicopter base and the place of lodging, thus making it difficult to stay within the 14-hour limit because of travel before and after the work day.

## **V. Method to Ensure an Equivalent or Greater Level of Safety**

To ensure an equivalent level of safety, MBR Helicopters proposed the following conditions and alternative HOS provisions:

- MBR Helicopters' drivers would, on average, use the exemption once every 2 weeks during the months of April through October;
- MBR Helicopters' drivers would not drive after the 16th hour after coming on duty;
- MBR Helicopters' drivers would take 8 hours consecutively off duty before coming on duty again;
- MBR Helicopters' drivers must have at least 2 hours off duty during the 16-hour period; and
- MBR Helicopters' drivers must be responding to or returning from an active incident as requested by an officer of a public agency or public utility.

MBR Helicopters stated that these conditions and alternatives are designed to keep the drivers using the potential exemption from driving fatigued. MBR Helicopters added that these conditions would ensure that the drivers authorized to use this exemption have guidelines that would enable them to use it only when necessary.

## **VI. Public Comments**

On December 18, 2020, FMCSA published notice of the MBR Helicopters application and requested public comment (85 FR 82574). The Agency received two comments, both opposing the exemption request. The Commercial Vehicle Safety Alliance stated the following:

In MBR Helicopters' request they fail to adequately identify how their drivers will maintain an equivalent level of safety while operating under extended hours-of-service requirements, which is a key component to a credible exemption request. Granting this request would extend the amount of time drivers can operate, exposing them to higher risk for fatigue and negatively impacting safety. Under extenuating emergency circumstances, emergency declarations are issued that waive the hours-of-service requirements for drivers responding to the emergency. Emergency declarations exist for the exact reasons outlined in the exemption request, to allow for operation beyond the current hours-of-service framework when there is an emergency that requires an expedited response. Short of an emergency declaration, there isn't a reasonable need for relaxation of the hours-of-service requirements to the level requested in this application. FMCSA should deny the exemption request.

Mr. Michael Millard added:

When working wildfires and other emergency activities MBR has the use of Part 390.23 as applicable to work the emergency based on its safety protocols. MBR doesn't specify whether or not the eight-hour break includes a commute time to and from work which makes the eight hours more like six hours or less. I hope the FMCSA denies MBR's request. If eight hours were suitable for drivers to get adequate rest, then the Federal Motor Carrier Safety Regulations should be revised to accommodate the trucking industry.

## **VII. FMCSA Safety Analysis and Decision**

When the Agency established the HOS rules, it relied upon research indicating that the requirements improve CMV safety. The HOS regulations provide a 14-hour window within which all driving must be completed and, with the exception of the adverse driving clause and the sleeper berth provision, all drivers subject to the HOS requirements must adhere to this restriction which helps to ensure that drivers remain alert during the work shift. In addition, the current regulations require that drivers of property-carrying vehicles have 10 consecutive hours off duty at the end of the work shift to ensure adequate opportunities for recuperative rest prior to the beginning of the next work shift.

The exemption application does not provide sufficient countermeasures to enable the Agency to conclude that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulations. There is no basis to conclude that extending the 14-hour “driving window” for the applicant would ensure the requisite level of safety or that decreasing the mandatory off-duty period would provide drivers with a sufficient amount of rest.

FMCSA has reviewed MBR's application and the public comments and has concluded that the requisite level of safety cannot be ensured, for the reasons discussed above. Accordingly, FMCSA denies the request for an exemption.

**Robin Hutcheson,**

*Acting Administrator.*

[FR Doc. 2022-04073 Filed: 2/25/2022 8:45 am; Publication Date: 2/28/2022]